

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

DESA IP, LLC,)	
Plaintiff,)	
)	
v.)	Civil Action No. 3-04-0160
)	Hon. Aleta A. Trauger
EML TECHNOLOGIES, LLC and)	Magistrate Judge Joe B. Brown
COSTCO WHOLESALE CORPORATION,)	
Defendants.)	

MOTION TO SUBSTITUTE
HEATHCO FOR DESA AS THE PLAINTIFF IN THIS ACTION

Pursuant to Fed.R.Civ.P. 25(c), Plaintiff, DESA IP, LLC (“DESA”), and HeathCo LLC (“HeathCo”), jointly move to substitute HeathCo for DESA in this case. This action involves infringement of United States Patent No. 5,598,066 (“the ‘066 patent”), which is directed generally to motion-activated security lights. HeathCo recently acquired DESA’s right, title and interest in and to the patent in issue in this case, including claims for infringement of the patent. Accordingly, HeathCo and DESA respectfully request that HeathCo be substituted as plaintiff for DESA in this action.

On August 28, 2007, at closing, DESA transferred its interest in the ‘066 patent and in the control of the litigation pursuant to an asset purchase agreement. Further, it was agreed that, in light of the transfer of ownership of the patent, the parties to the agreement would attempt to replace DESA as plaintiff in this action. Attached as Exhibit A to this motion is an assignment under which the ‘066 patent has been assigned from DESA to HeathCo. Pursuant to the assignment, HeathCo acquired the entire right, title, and interest to the patent, including claims for damages by reason of past, present, or future infringement.

Rule 25(c) of the Federal Rules of Civil Procedure recites as follows:

In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.

Fed.R.Civ.P. 25(c). Accordingly, because HeathCo is now the real party in interest, it is hereby requested that this Court substitute HeathCo for DESA as plaintiff.

WHEREFORE, DESA and HeathCo respectfully request an order substituting HeathCo for DESA as plaintiff in this action.

Date: October 19, 2007

Respectfully submitted,

s/ Richard G. Sanders

Robb S. Harvey (TN Bar No. 11519)
Richard G. Sanders (TN Bar No. 23875)
WALLER LANSDEN DORTCH & DAVIS, LLP
511 Union Street, Suite 2700
Nashville TN 37219-8966
Phone: (615) 244-6380
Tel: (615) 244-6804
Email: rharvey@wallerlaw.com &
rick.sanders@wallerlaw.com

Local Counsel for Plaintiff

James R. Higgins, Jr. (KY Bar No. 31790)
Robert J. Theuerkauf (KY Bar No. 89068)
MIDDLETON REUTLINGER
2500 Brown & Williamson Tower
Louisville, Kentucky 40202
Tel: (502) 584-1135
Fax: (502) 561-0442
Email: jhiggins@middreut.com &
rtheuerkauf@middreut.com

Attorneys for DESA IP, LLC

Of Counsel

Karl R. Fink (IL Bar No. 6180508)
Rudy I. Kratz (IL Bar No. 6216387)
FITCH, EVEN, TABIN & FLANNERY
120 South LaSalle Street, Suite 1600
Chicago, Illinois 60603
Tel: (312) 577-7000
Fax: (312) 577-7007
Email: krfink@fitcheven.com &
rkratz@fitcheven.com

Attorneys for HeathCo LLC

CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2007, a true and correct copy of the foregoing document was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system. Parties/counsel who are to receive service include:

Iris S. Mitrakos
Leonard J. Augustine, Jr.
Gary H. Ritchey
TOWNSEND TOWNSEND & CREW
Two Embarcadero Center, Eighth Floor
San Francisco, CA 94111; and

Steven W. Riley
William M. Outhier
BOWEN RILEY WARNOCK & JACOBSEN
1906 West End Avenue
Nashville, TN 37203.

s/ Richard G. Sanders
Local Counsel for Plaintiff